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Annexure MA-1

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

Orders pronounced on: 25.2.2016
(Orders reserved on: 22.01.2016)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

(I) O.A.NO.060/00884/2014

Baldev Singh son of

Late Shri Avtar Singh,

aged 70 years,

Ex-Chief Technical Supervisor,

presently resident of 61,

Ekta Vihar,

120F, Road Dilbagh Nagar,

Extension,

Jalandhar.

Applicant

By: Mr. Jagdeep Jaswal, Advocate.

Versus

1. Union of India through Secretary,

Ministry of Communications and Information Technology,

Department of Telecommunication,

Sanchar Bhawan,

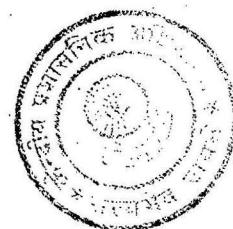
New Delhi.

2. Controller of Communications Accounts,

Punjab Telecom Circle,

Madhya Marg,

Sector 27-A,



(6)

Chandigarh.

3. Dy. Controller of Communications Accounts O/o CCA, Punjab
Telecom Circle, Madhya Marg, Sector 27A, Chandigarh.

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel

Respondents

(II) O.A.NO.060/00453/2015

Baldev Raj son of Shri Ram Rakha, aged 67 years, Lower Division Clerk (Retired), resident of House No. 3086/14, Gali No. 6, Haripura, Amritsar-143001 (Punjab).

Applicant

By: Mr. A.L. Vohra with Mr. Manohar Lal, Advocates.

Versus

1. Union of India through Secretary,
Ministry of Finance and Company Affairs, Department of Revenue (Income Tax) through Chairman, Central Board of Direct Taxes, South Block, New Delhi-110001.
2. Chief Commissioner of Income Tax-II, Old Central Revenue Bhawan, Maqbool Road, Amritsar-143001.

By: Mr. Sanjay Goyal, Senior Panel Counsel.

(III) O.A.NO.060/00542/2015

A.L. Anand son of late Shri Mora Mal Anand, aged 79 years, Ex-Deputy Post Master, presently resident of H.No. 602, Inder Nagar, Ambala City.

Applicant

By: Mr. Jagdeep Jaswal, Advocate.

Versus

(O.A.No. 060/00884/2014-
Baldev Singh Vs. UOI etc.)

1. Union of India through Secretary,
Ministry of Communications, Department of Posts, Dak Bhawan,
New Delhi.
2. Chief Post Master General, Haryana Postal Circle, Ambala-133001.
3. Superintendent of Post Offices, Ambala Division, Ambala-133001.

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel

(IV) O.A.NO.060/00766/2015

Smt. Tarawati wife of Late Sh. Jaipal Sharma, aged years, Resident
of House No. 69, Raipur khurd, Behlana, Chandigarh.

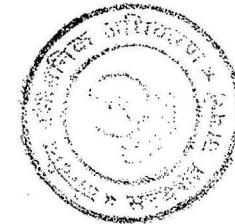
Applicant

By: Mr. Rohit Sharma, Advocate.

Versus

1. Union of India through the Secretary, Government of India,
Ministry of Communications & Information Technology, Sanchar
Bhawan, New Delhi.
2. Chief Postmaster General, Punjab Circle, Sector 17, Chandigarh-
160017.
3. Senior Superintendent of Post Offices, Chandigarh Division,
Chandigarh-160017.

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel



(V) O.A.NO.060/00816/2015

Chhota Ram son of Shri Gafoor Chand aged 60 years, Postman (Retired)
resident of Amar Vihar Colony, Street No.5, Bhadson Road, Patiala
(Punjab).

Applicant

(8)

By: Mr. A.L. Vohra, Advocate.

Versus

1. Union of India through Secretary,
Ministry of Communications and Information Technology,
Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New
Delhi-110001.
2. Chief Postmaster General, Punjab Circle, Sector 17-E,
Chandigarh-160017.
3. Senior Superintendent of Post Offices, Patiala Division, Patiala-
147001.
4. Senior Postmaster, Head Post Office, Patiala-147001.

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel

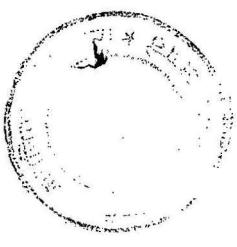
(VI) O.A.NO.060/00817/2015

Manohar Lal Takkar son of Shri Uttam Chand, aged 73 years, SPM
(Retired), resident of # 292, Ward No. 4, Near Gurudwara Akalgarh,
Sunam, District Sangrur (Punjab).

Applicant

By: Mr. A.L. Vohra, Advocate.

Versus



1. Union of India through Secretary,
Ministry of Telecommunications and Information Technology,
Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New
Delhi-110001.
2. Chief Postmaster General, Punjab Circle, Sector 17-E,
Chandigarh-160017.
3. Superintendent of Post Offices, Sangrur Division, Sangrur-
148001.

(O.A.No. 060/00884/2014-
Baldev Singh v/s. UOI etc.)

4. Sub Postmaster, Sunam City, Sub Post Office, District Sangrur.

Respondents

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel

(VII) O.A.NO.060/00895/2015

Gian Chand son of Sh., Des Raj aged about 71 years, r/o Haveli Ghasita Singh, Partap Bazar, Cheharata, Amritsar.

Applicant

By: Mr. Mukesh Bhatnagar, Advocate.

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Communications and I.T. Department of Posts, Nirman Bhawan, New Delhi.
2. Post Master General, Area-II, Sector 17, Chandigarh.
3. Superintendent RMS "1" Division, Jalandhar.

Respondents

By: Mr. Ram Lal Gupta, Sr.Central Govt. Standing Counsel

(VIII) O.A.NO.060/00922/2015

Harbhajan Singh son of Shri Sant Ram, aged 64 years, Sub Postmaster (Retired) resident of Ward No. 12, Garhshankar, District Hoshiarpur-144527 (Punjab).

Applicant

By: Mr. A.L. Vohra and Manohar Lal, Advocates.

Versus

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.

(10)

2. Chief Postmaster General, Punjab Circle, Sector 17-E, Chandigarh-160017.

3. Senior Superintendent of Post Offices, Hoshiarpur Division, Hoshiarpur-146001.

.... Respondents

By: Mr. Ram Lal Gupta, Sr. Central Govt. Standing Counsel

(IX) O.A.NO.060/01025/2015

Lachhrnan Dass son of Shri Mela Ram, aged 83 years, Senior Superintendent of Post Offices Gr. 'A' (Retired) resident of House No. 64, Ward No. 9, Garhshankar, District Hoshairpur-144527 (Punjab).

Applicant

By: Mr. A.L. Vohra and Mr. Manohar Lal, Advocates.

Versus

1. Union of India through Secretary,

Ministry of Telecommunications and Information Technology,
Department of Posts, 415, Sanchar Bhawan, Ashoka Road,
New Delhi-110001.

2. Chief Postmaster General, Punjab Circle, Sector 17-E, Chandigarh-160017.

3. Senior Superintendent of Post Offices,
Chandigarh Division, Chandigarh,
Chandigarh-160017.

4. Senior Superintendent of Post Offices,
Hoshiarpur Division, Hoshairpur-146001.

.... Respondents

By: Mr. Ram Lal Gupta, Sr. Central Govt. Standing Counsel

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. By this Common order, we propose to dispose of nine connected petitions, as common questions of law and facts are involved. Learned counsel representing the parties would also suggest likewise. For facility of reference facts are being taken from O.A. No. 060-01025-2015 (Lachman Dass Vs. UOI etc.)
2. The core issue which is to be addressed in these petitions is as to whether the retired employees or their widows are entitled to medical reimbursement under the Central Services (Medical Attendance) Rules, 1944 or not?
3. The applicant is aggrieved by the letter dated 11.9.2015 (Annexure A-1) and letter dated 19.10.2015 (A-1A) vide which his medical reimbursement claim of Rs.4,46,381/- for emergent treatment of his severe heart attack from a nearby private specialized Ivy Hospital, Nawan Shahr during the period from 28.06.2015 to 30.06.2015 has been rejected on the ground that there is no provision under CS (MA) Rules, 1944 for settlement of medical claims of retired government officials. He has also sought issuance of direction to the respondents to reimburse aforesaid amount with 12% interest on delayed payment.
4. The applicant has retired as Senior Superintendent of Post Offices, Chandigarh on 31.3.1990 and is now resident at Garhshankar (Punjab) which is not covered by CGHS facility. While in service, the applicant was governed by the Central Servicess (Medical Attendance) Rules, 1944 for medical facilities. At the time of his retirement, CGHS facility was not available in the State of Punjab or nearby areas and as such he could not have been registered

(12)

under the CGHS. Lately, the CGHS facility was extended to Chandigarh in the year 2002. The applicant residing at a far off place could not be enlisted there as it was impracticable to avail the day to day medical facility by traveling from residence and as such he opted for receipt of fixed medical allowance of Rs.100/- per month which was revised to Rs.300/-and then Rs.500/-.

5. On 28.6.2015, the applicant felt acute chest pain and breathlessness. He was rushed to local Civil Hospital, where his condition could not be controlled and in a very serious condition, he was taken to a private Ivy Hospital (Super Specialty Health Care), Nawanshr and after treatment was discharged on 30.06.2015 and incurred an expenditure of Rs.4,46,381/. He submitted the aforesaid claim vide representation 4.8.2015 (Annexure A-15) which was rejected on 11.9.2015 (A-1) on the ground that there is no provision in Central Services (Medical Attendance) Rules, 1944 for such reimbursement. The applicant made a representation dated 29.9.2015 (A-15) to respondent no.2 claiming benefit on the basis of judicial pronouncements but to no avail and said authority insisted on pointing out relevant rule position under which such a claim cannot be allowed. Hence, the instant Original Application.

6. It is further submitted by the applicant that the people in employment as well as retirees living in CGHS covered stations are entitled to the reimbursement of medical claim whereas persons not covered by Central Government Health Scheme area and paid fixed medical allowance are not extended such medical reimbursement which is discriminatory. They submit that as per the Office Memorandum dated 19.12.1997 (Annexure A-3) the

Government fixed medical allowance to persons like applicants at Rs.100/- as revised to Rs.300 and then to Rs.500/-. As per O.M. dated 5.6.1998 (Annexure A-4) the Government of India took a conscious policy decision that "pensioners should not be deprived of medical facilities from the Government in their old age when they require them most". It is, thus, claimed that Government had no objection to extension of said rules to retirees residing in non-CGHS areas. It was suggested that the pensioners could be given one time option at the time of their retirement for being covered under the CGHS or CS (MA) Rules, 1944. As per O.M. dated 20.8.2004 (A-5) it was explained that O.M. dated 5.6.1998 was not intended to be a final order for extension of CS (MA) Rules, 1944 to the pensioners. The Principal bench of this tribunal in 2007 (2) CAT AISLJ, 183 (A-6) held that O.M. dated 5.6.1998 has not been superseded or deleted in any manner and has only been clarified and as such effect of O.M. dated 5.6.1998 (A-4) could not be taken away. It is submitted that in **Mohinder Singh Vs. UOI etc.** 2008 (2) SCT 239 (A-7), it was held that the fixed medical allowance of Rs.100/- is paid to retirees to cater to day to day medical expenses which do not require hospitalization and as such incumbent was entitled to reimbursement of medical expenses for his heart ailment for which he remained hospitalized in D.M.C. Ludhiana. Similar view was taken in **V. Gopalakrishnan Vs. Union of India & Others**, 2006 (3) (CAT) AISLJ 90. It was held in **Prataprai Shanti Lal Oza Vs. UOI etc.** by Ahmadabad Bench of this Tribunal on 3.4.2014 (A-10) that there cannot be any discrimination between serving and retired government servants in the matter of medical reimbursement. It

is pleaded that right to health and family care to protect health and vigour while in service or post retirement is a fundamental right as held in **Consumer Education and Research Centre Vs. Union of India**, AIR 1995 (SC) 922. It is pleaded that even interest has been allowed by this Tribunal in **Shri Laxmi Chand Vs. Comptroller & Auditor General of India**, 2005 (1) ATJ 31. The medical reimbursement claim for treatment done either in recognized or unrecognized hospital in emergency has to be treated on similar footing and reimbursement cannot be denied. For this reliance is placed on Principal Bench of this Tribunal's decision in **Dr. M.A. Haque Vs. Secretary of Environments and Forests**, 8/2008 Swam news, Page 69, O.A. No. 179/2007. Reliance is also placed on **Mohinder Singh Vs. Union of India etc.** 2008 (2) SCT 239; **Kishan Chand Vs. Govt. of NCT & Others**, Writ Petition © No. 889/2007; **Sat Pal Gupta Vs. Union of India etc.** OA 060/00001/2014 (Annexures A-7 to A-9). Decision of Delhi High Court in **Krishan Chand Vs. Government of NCT & Others**, Writ Petition © No. 889 of 2007 dated 12.3.2010. The Hon'ble Apex Court in order dated 3.4.2012 (A-11) has dismissed 32 SLPs filed during 2004 to 2011 against medical reimbursement claims allowed by various Benches of this Tribunal and were upheld by concerned High Courts. The Review Petitions were also dismissed on 30.10.2013 (A-12). This Tribunal also allowed similar **O.A.No. 1062-PB-2009** as upheld by High Court of Punjab and Haryana in **CWP No. 12927/2010** decided on 26.7.2010 (A-13) and SLP there against was also dismissed vide Annexure A-11A. It is submitted that in O.M. dated 20.1.2011 (A-14) the Govt. of India, Ministry of Health & Family

Welfare, Govt. of India, New Delhi, has itself held that in case of treatment taken in any non-recognized private hospitals, reimbursement shall be considered at CGHS prescribed packages / rates only.

7. The respondents have opposed the claim of the applicant by filing a detailed reply statement. It is submitted that there is no rule under which the claim of the applicant could be allowed. They cannot take benefit of O.M. dated 5.6.1998 which stands clarified by the O.M. dated 20.8.2004 indicating that former O.M. was not a final decision and the authorities relied upon by the applicants do not help them at all.
8. We have heard learned counsel for the parties at length and examined the pleadings on record with their assistances.
9. Today, learned counsel for the applicants pressed into service a Single Bench decision of this Tribunal in a bunch of Original Applications leading one being O.A.No. 060/00526/2015 – **Smt. Satya Devi etc. Vs. Union of India & Others** decided on 5.1.2016 pleading that the issue raised in this case stands fully answered in favour of the applicants and as such these cases may also be allowed in same terms. Whereas the counsel representing the respondents argued that they have already filed review petition in those matter therefore till there review is decided the applicants cannot derive any benefit out of that judgment. Since one of us (Sanjeev Kaushik, JM) was the author of the said judgment and is aware of the facts on which review has been filed, therefore pendency of review will not be bar to hear and decide this matter. Be that it may, we proceed to decide the issue

involved in this case on the basis of pleadings and judicial pronouncement on the subject.

10. The Government and other authorities were under direction to focus and give priority and other authorities for focussing and giving priority to the health of its, citizen, which not only makes one's life meaningful, improves one's efficiency, but in turn gives optimum output. Further to secure protection of one's life is one of the foremost obligation of the State, it is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. The obligation includes improvement of public health as its primary duty. Learned counsel for the respondents on the other hand does not deny such a right but urges that the same can be placed within permissible limits by rules and policies laid down. The right claimed may be sacrosanct, which has to be given, but the same can be put within reasonable limits, under a policy which is framed after taking into consideration various factors. These observations came to be made by their Lordships of Apex Court, in the light of rigor of Article 21 of the Constitution, in the celebrated case of State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors. (1998) 4 SCC 117.

11. No doubt, the Government and its instrumentalities take care of medical requirement of serving employees but the retired employees and / or widows are a neglected lot and after retirement if they spent huge amount on treatment, they have to run from pillar to post to get back amount spent by them on such medical treatment.

12. It is undisputed that Central Services (Medical Attendance) Rules, 1944, do not apply to number of categories including retired government officials as per Note 2 inserted in the said rules. The validity of these rules qua exclusion of retired employees from medical treatment, was challenged in various cases including in O.A.No. 686-HR-1999 - Ram Dev Singh etc. etc. Vs. Union of India & Others and was upheld vide order dated 17.3.2003, 2002-2003 A.T. Full Bench Judgments, Page 48. The Full Bench of this Tribunal while upholding the validity of the said exception relating to the retired employees also issued direction that a Scheme for such category may be framed particularly for indoor treatment for reimbursement of the claims and till it is done, if a retired government servant who enrolls himself under the CGHS initially but in fact resides in an area not covered under the Scheme shall not be entitled to claim reimbursement immediately.

13. The Ministry of Health and Family Welfare vide O.M. No. 4025/4/96-MS dated 5.6.98 has taken a conscious decision in favour of the retired employees as under : -

"The undersigned is directed to refer to the Department of Pension and Pensioners' Welfare, O.M. No. 45/74/97-PP&PW(C), dated 15.4.1997 on the above subject and to say that it has been decided by this Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most. This Ministry has, therefore, no objection to the extension of the CS (MA) Rules to the Central Government pensioners residing in non CGHS areas as recommended by the Pay Commission. However, the responsibility of administrating the CS (MA) Rules for pensioners cannot be handled by CGHS. It should be administered by the respective Ministries/Departments as in the case of serving employees covered under CS (MA) Rules, 1944. The Department of Pension and

Pensioners' Welfare would need to have the modalities worked out for the implementation of the rules in consultation with the Ministries/Departments prior to the measure being introduced to avoid any hardships to the pensioners. The pensioners could be given a one-time option at the time of their retirement for medical coverage under CGHS or under the CS (MA) Rules, 1944. In case of a pensioner opting for CGHS facilities, he/she would have to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities. In such cases, the reimbursement claims would be processed by the Additional Director, CGHS of the concerned city. For those opting for medical facilities under the CS (MA) Rules, the scrutiny of the claims would have to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The list of AMAs to be appointed under CS (MA) Rules would be decided Ministry/Department-wise as provided under the rules. The beneficiaries of the CS (MA) Rules, 1944 would be entitled to avail of hospitalization facilities as provided under these rules.

The Department of Pension and Pensioners' Welfare are requested to take further necessary action in the matter accordingly."

14. In furtherance of the aforesaid decision, the claims of medical reimbursement of the retired Government servants, not covered by the CGHS, were being allowed by the various departments from where the Government employee concerned has retired.
15. However, on a reference being made, the Department of Health, Ministry of Health and Family Welfare, New Delhi, issued a clarification vide O.M. No. 14025/96/MS dated 20.8.2004 to the aforesaid O.M. dated 5.6.98 explaining that they did not have any objection to the proposal of extension of Central Services (Medical Attendance) Rules, 1944 to Central Government pensioners residing in non-CGHS areas as recommended by the 5th Central Pay Commission, subject to the condition that the responsibility of administering the Civil Services (Medical Attendance) Rules, 1944

for pensioners would be that of the concerned Departments/Ministries and O.M. dated 5.6.98 was only in reply to a reference from the Department of Pension and Pensioners Welfare and the final decision was to be taken only after ascertaining the views of the various Ministries/Departments. However, O.M. dated 5.6.98 was mis-interpreted by some pensioners as the final order of the Government of India to extend Civil Services (Medical Attendance) Rules, 1944 to pensioners. Therefore, it was clarified that the O.M. dated 5.6.98 was not intended to be the final decision extending the applicability of Civil Services (Medical Attendance) Rules, 1944 to pensioners. After examination of matter in consultation with the various Ministries/Departments including the Department of Expenditure, the Department of Expenditure has informed them that the recommendation of the 5th CPC cannot be accepted because of the huge financial implications involved and therefore it is not feasible to extend the Central Services (Medical Attendance) Rules, 1944 to the pensioners. On the basis of such clarification, the departments started rejecting the medical reimbursement of the retired employees.

16. The issue as to whether a clarification could take away effect of a policy decision i.e. whether the clarification of 2004 could make O.M. dated 5.6.1998 nugatory or not was considered by the Principal Bench of this Tribunal in the case of Partap Singh Vs. Director, Subsidiary Intelligence Bureau, 2007 (2) SLJ 185 (CAT) decided on 23.8.2006 and it was held that "xxx O.M dated 5.6.1998 has not been superseded or deleted in any manner but has been clarified to the extent that the pensioners would not come within the purview of CS (MA) Rules". The Court also took

note of decision of a Full Bench of this Tribunal in the case of Ram Dev Singh (supra) and ultimately held that "a right has accrued to the pensioners of medical reimbursement of medical expenses incurred, as if within the ambit of CS (MA) Rules on their extension bestowed to them vide O.M. dated 5.6.1998 cannot be abrogated or take away by a clarificatory memorandum, that too, retrospectively, which is not only ultra vires but also against all canons of compassion, equity and welfare measures. Right to health of a Government servant is a fundamental right, which cannot be taken away by such memorandum". Placing reliance on **Anil Rattan Sarkar Vs. State of West Bengal**, 2001 (5) SCC 327 and Full Bench decision of this Tribunal in **R. Jambukeswaran v. Union of India**, 2004 (2) ATJ CAT 1, it was further held by the Court that an administrative order cannot overturn the judicial pronouncements. It was also held that decision of the Government not to extend CS (MA) Rules to the pensioners was not reasonable.

17. Our own jurisdictional High Court of Punjab and Haryana in the celebrated case of Mohinder **Singh Vs. Union of India & Others**, 2008 (2) SCT Page 239, has considered the issue in detail. In that case retired employee, getting fixed medical allowance of Rs.100/-, was denied medical reimbursement for indoor treatment under Central Services (Medical Attendance) Rules, 1944. The Court came to rescue of the petitioner and held that the petitioner had to per force opt fixed medical allowance as the area where he was residing was not covered by the CGHS. For those opting for medical facilities i.e. fixed medical allowance of Rs.100/- under the Rules, as is in the case of the petitioner, the

scrutiny of the claims for medical reimbursement is to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The beneficiaries of the rules would be entitled to avail of hospitalization facilities as provided under these rules. Thus, the authorities were directed to reimburse the medical expenses incurred by the petitioner during his treatment in D.M.C. Ludhiana, at the rates fixed by the Central Government under the rules.

18. The issue of reimbursement of medical expenses again came up for consideration before the Hon'ble Madras High Court (D.B) in Writ Petition No. 32770 etc. - Union of India Vs. R. Rangarajan & Another decided on 29.9.2008 and after exhaustive discussion, it was held as under :-

"Keeping in view the relevant Rules and Orders issued from time to time and also the overwhelming sentiments expressed in various pronouncements of the Supreme Court and different High Courts, our conclusions are as follows :

- (1) Though the recommendation of the 5th Pay Commission for extending the benefits available to the employees under CS (MA) Rules, 1944, appears to have been accepted on principle, the modalities have not been worked out and CS (MA) Rules have not been formally made applicable to the retired employees.
- (2) Technically speaking, the benefit of CGHS for reimbursement of expenses incurred as indoor patient can be availed by a retired employee only if he becomes or continue as a member by making contribution.
- (3) Denial of CGHS Card to a retired employee on the ground that he has retired from a place not covered under CGHS is improper.
- (4) Though theoretically a retired employee can opt for treatment as indoor patient in a distant place covered by CGHS, for all practical purposes such a possibility is extremely remote.

In other words, for all practical purposes, retired employees residing in remote areas are deprived of the opportunity of availing benefits of CGHS as indoor patient.

(5) The payment of monthly allowance of Rs.100/- to retired employees is only to provide for day-to-day treatment, where outdoor facilities are not available. However, payment of such allowance cannot be a ground to deny the benefit of reimbursement for medical expenses incurred as indoor patient.

(6) Though right to live or lead the life, particularly after retirement, can be considered as a Part of Article 21 of the Constitution, the content and extent of such right would depend upon various factors.

(7) Denial of benefits contemplated under CS (MA) Rules or CGHS to retired employees on the ground that such Rules are not applicable or on the ground that the retired employees are residents of areas not covered by CGHS, is *prima facie* contrary to the spirit of Articles 14 and 21 of the Constitution.

(8) The recommendations of the 5th Pay Commission and the subsequent policy decision of the Ministry of Health as in the Office Memorandum dated 5.6.1998 are reasonable, deserving acceptance and implementation unless there are any insurmountable hurdle.

(9) The various retired employees had undergone the expensive treatment as indoor patients at a time when the normal understanding was the applicability of CS (MA) Rules to retired employees as per Office Memorandum dated 5.6.1998 and thus all such persons had at least a legitimate expectation of being reimbursed. All efforts should be made to fulfil such legitimate expectation, if not as a matter of absolute legal right, at least as a matter of grace.

30. In view of the above conclusion, it has to be decided as to the extent and content of medical facilities to be extended to the retired Central Government officials who do not reside within the areas covered under the CGHS and the nature of directions to be issued.

31. It has to be remembered that keeping in view such difficulty on the part of the retired

Government employees, 5th Pay Commission had rightly recommended that the facilities available similar to CS (MA) Rules, can be made available to such persons. It is no doubt true that such Rules are yet to be amended and Note-2 excludes the applicability of such Rules to the retired employees. We are conscious of the legal position that the High Court in exercise of jurisdiction under Article 226 of the Constitution, cannot direct that a particular Statute or particular statutory Rule should be enforced. However, since such recommendations had been made at a very distant point of time by 5th Pay Commission and since as a matter of policy the Ministry of Health and the Department of Pension and Pensioner's Welfare had no objection, or rather had agreed to the extension of such facility to the retired Government employees, a direction can be issued to the Central Government to consider the said aspect and to extend the facilities available either under CGHS or CS (MA) Rules, to the unfortunate group of pensioners who per force have to live in an area coming outside the purview of CGHS so that in case of hospitalisation and treatment as an indoor patient in respect of serious diseases contemplated in CS (MA) Rules or CGHS, a reasonable reimbursement at par with CGHS or CS (MA) Rules, as the case may be, can be made available.

32. We have thought it fit to issue the aforesaid direction keeping in view the observation of the Supreme Court and other Courts in several cases that right to health care is a fundamental right recognised under Article 21 and also with a view to ensure equality between the retired employees, who are residing in and around the CGHS covered areas and those who are residing in places which are far-off from CGHS covered areas. Such appropriate decision should be taken as expeditiously as possible, preferably within a period of six months from the date of the present direction.

33. We further direct that purely as a matter of legitimate expectation or even grace, if not as a matter of right, the claim for reimbursement made by various applicants should be allowed in the manner indicated by the Tribunal, as we feel the Tribunal by giving such directions has rendered substantial justice and, in exercise of jurisdiction under Article 226 of the Constitution, we are not inclined to interfere with such orders which have the effect of advancing the cause of

substantial justice and which have the effect of abjuring the vice of discrimination between the retired Central Government employees who are covered under CGHS by fortunately and fortuitously residing in areas covered under CGHS and their less fortunate brethren who after retirement have settled down in places far away from the areas covered under the CGH Scheme. Such reimbursement should be effected within a period of sixty days from the date of receipt of the present order. The question of any deduction required to be made towards contribution for availing the facility of CGHS, is left to the discretion of the concerned Department."

19. An identical issue came to be considered by Hon'ble Himachal High Court in the case of Sudarshan Kumar Sharma Vs. Union of India etc. 2013(1) SCT 817. In that case also, the claim of retiree was declined on the ground that pensioner was not CGHS beneficiary on relevant date and pensioner were not covered under CS (MA) Rules, 1944. It was held that it is the duty of a Welfare state to look after the health of its citizens including retirees. Right to health is an integral part of right to life and claim of pensioner was allowed.

20. Similarly, in O.A. No. 1559-HR-2013 – Chuni Lal Dua Vs. UOI etc. decided on 30.1.2014 a Bench of this Tribunal, in which one of us (Sanjeev Kaushik, JM) was also a party, considered the issue. The Bench placing reliance upon Mohinder Singh Vs. Union of India, 2008 (2) SCT 239 and Darshan Singh Rai Vs. Union of India & Others, 2008 (2) SCT 242, allowed the claim of the applicant on the premise that fixed medical allowance of Rs.100/- as revised to Rs.300/- was only for day to day medical needs and not for indoor treatment. Thus, the claim was allowed at the rates fixed by the PGIMER.

21. The Ahmedabad Bench of this Tribunal in O.A.No. 379 of 2013 – Shri Prataprai Shantilal Oza Vs. Union of India etc. decided on 3.4.2014, while taking note of O.M. dated 5.6.1998, and case law on the subject including State of Punjab Vs. Mohinder Singh Chawla, AIR 1997 SC 1255, has held that it is the duty of the Courts and Tribunals to remind the government of their obligations and responsibilities in the matter of extending medical facilities to the retired government employees at par with the serving government officials. This is particularly so in the light of the Constitutional obligations on the part of the Government and the instrumentalities of the Government to ensure protection of the right to life envisaged in the Constitution of India. If the serving government officials and retired employees are treated differently in the matter of protecting their health, keeping a wide hiatus between the two categories in the context of granting medical facilities, same would be violative of fundamental right of equality guaranteed in Article 14 of the Constitution of India. Thus, O.A. was allowed and pensioner was allowed benefit of medical claim. Similar view was taken by Jodhpur Bench of this Tribunal in O.A.No. 207/2013 – Vinod Kumar Bohra Vs. UOI etc. decided on 11.2.2014, by observing as under : -

"Therefore, in my considered view in the light of OM dated 05.06.1998, which has been sent by the respondent themselves to the applicant as at Annexure-A/3 and by which the CS (MA) Rules have been directed to be extended to retired Government officials and the same has been upheld to hold the field as per judgment of the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No.7895/2004 and also in the light of the judgment of the Hon'ble High Court of Karnataka at Bangalore in Writ Petition No.39031/2003 wherein rule regarding non-applicability of CS (MA) Rules, 1944 to retired Government servants has been declared

unconstitutional, and in the spirit of judgment of the Hon'ble Delhi High Court in Civil Writ Petition No.4873/2000 that discrimination cannot be made on the basis of the pensioners residing in CGHS area or non-CGHS area, the applicant is entitled to reimbursement of his medical claims for expenditure in a hospitalization case."

22. The Hon'ble Delhi High Court in the case of Kishan Chand Vs. Govt. of N.C.T. & Others, 2010 STPL (Web) 625 DEL, while examining the same issue has held as under :-

"It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the petitioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired."

23. The Government had gone in appeal in number of cases relating to medical reimbursement to retired government employees by filing a number of SLPs including SLP No. 10659 of 2005 etc. etc. titled Union of India & Another Vs. Prabhakar Sridhar Bapat etc. which were dismissed on 3.4.2012. The Review Petitions filed by the Union of India too were dismissed on 30.10.2013 and as such the issue attained finality upto apex dispensation.

24. The learned counsel for the respondents vehemently argued that once the legality of Rules has been upheld by a Full Bench of this Tribunal in the case of Ram Dev Singh (supra), the applicants

cannot be extended benefit of decisions rendered by various Benches of this Tribunal in a number of cases.

25. The issue as to whether a Bench of this Tribunal is bound by the Full Bench decision of this Tribunal or a Single Bench decision of Hon'ble High Court would have precedence came to be thrashed on 22.6.2001 in O.P. No. 30737 of 2000 by Kerala High Court in the case of Ranganathan Vs. Union of India etc. Hon'ble Court held that it is "distressed to note that the Central Administrative Tribunal, Ernakulam Bench is laboring under a misapprehension that they are bound by the Full Bench decision of the Tribunal rather than a decision rendered by learned Single Judge of this Court". It was held that the Tribunal is bound by the decisions of the High Court exercising powers under Articles 226 and 227 of the Constitution of India, whether it is rendered by a Single Judge or by a Division Bench.

26. The learned counsel for the applicants on the basis of the aforesaid legal position under law in which the courts upto apex dispensation have held settled that even the retired employees are also entitled to medical reimbursement, pleaded that the claim of applicants herein merits acceptance. This was opposed by the learned counsel for the respondents who placed reliance on decision of a co-ordinate Division Bench of his Tribunal in O.A.No. 060/00689/2014 - Harpreet Kaur Vs. Union of India etc. decided on 18th March, 2015 in which the Tribunal held that since the applicant therein had not brought on record any material to indicate that the CGHS contribution had been made and the applicant got her CGHS card to avail of the CGHS facility, the O.A. was dismissed. He also pressed into service another decision of

Hon'ble Delhi High Court in the case of Dal Chand Vashisht Vs. Government of NCT of Delhi & Others, decided on 14.3.2008.

In that case petitioner had taken treatment on 5.5.2004 and had applied for membership of relevant scheme by paying fee only on 11.3.2004 and became member on 23.3.2004 i.e. after he had already taken treatment. The Tribunal had rejected a claim raised by him in O.A.No.939/2006 on 13.11.2006. The validity of this order was challenge by way of judicial review in the Hon'ble High Court of Delhi. However, the writ petition was dismissed. The Hon'ble High Court in short has held as under :-

"22. With regard to the classification between in-service and ex-service employee, the court observed that such classification was legal, valid and reasonable and extension of the same benefit to retired employees as they were enjoying while in service cannot be claimed as a right. The court was also guided by the fact that the CGHS for retired civil servant was also a contributory scheme and thus retired civil servants, who are members of the scheme are covered by the scheme and they are also provided medical service on payment of a specified amount under the scheme. Since the court has clarified that there is no right to full and free medical facility, though there is a right to medical aid, all persons, upon their retirement must make the requisite contribution and exercise their option to become a member of such schemes before they can seek to obtain the benefit under the said scheme where it is contributory. The court has taken judicial note of the limited financial resources, which the State is possessed of, in coming to its aforesaid conclusion. We also, cannot lost sight of this factor. Having taken note of the aforesaid recent pronouncement of the Supreme Court, we revert to examine the various decisions considered by the learned single Judge of this Court in V.K. Jagdhari (supra).

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26. To be able to obtain the benefit of a scheme, it is essential that the person/claimant is a member of the said scheme. If the membership is automatic i.e. it comes with the status of the person, the person would be entitled to the benefits thereof, unless he expressly, or by his conduct evinces his intentions not to participate in the scheme - e.g. where he does not pay the subscription due from him. However, where has an option, - whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, he cannot claim any benefits under the scheme

unless he exercises his option to get covered by the scheme and also takes the necessary steps by paying the subscription therefore.

27. The learned counsel for the respondents argued with vehemence, on the basis of aforesaid two judicial pronouncements and the Full Bench decision of this Tribunal in the case of Ram Dev Singh (supra) that once the legality of CS (MA) Rules, 1944, which specifically exclude medical reimbursement to retired employees, has been upheld by the very Full Bench of this Tribunal, the applicants, who are pensioners and falling with the exception clause, would not be entitled to the medical reimbursement claimed by them and in any case they have been residing in a non-CGHS areas and never became a member of the CGHS Scheme and as such on this ground also, they are not entitled to reimbursement of medical expenses claimed by them.

28. Apparently, on the one hand the claim of the applicants is found to be covered by a decision of Hon'ble Punjab and Haryana High Court in the case of Mohinder Singh (supra) and Hon'ble Himachal Pradesh High Court in the case of Sudarshan Kumar Sharma (supra) and on the other hand the claim is to be examined in the light of full Bench decision of this Tribunal in the case of Ram Dev Singh (supra) and the Hon'ble Delhi High Court in the case of Dal Chand Vashisht (supra).

29. One, we have the benefit of decision of two jurisdictional High Courts on an issue, then there is no question of following the decision of a Full Bench of this Tribunal in view of the observations made by the Hon'ble Kerala High Court in the case of Ranganathan (supra), as extracted above.

30. Now the question arises as to what would be the position in regard to the decision of Hon'ble Delhi High Court in the case of Dal Chand Vashisht (supra). That decision apparently is opposed to the view taken by the Hon'ble Punjab and Haryana High Court and the Hon'ble Himachal Pradesh High Court quoted above and in view of settled legal proposition that a Bench of the Tribunal is bound to follow the view taken by the jurisdictional High Court, we have no doubt in our mind that the decision of the both the High Courts, one of Himachal Pradesh High Court and that of Hon'ble High Court of Punjab and Haryana High Court would have to be favoured more so when the same are more convincing and as such there remains no doubt in our mind that the claim of the applicants deserves to be allowed. The Hon'ble Supreme Court in the case of **Ambica Industries Vs. Commissioner of Central Excise**, (2007) 6 SCC 769, has taken the view that the ITAT would be bound by the judgment of the jurisdictional High Court in which the Assessing Officer is located. Similar is the view taken in **Seth Banarasi Das Gupta Vs. Commissioner of Income Tax**, (1971) 81 ITR 170 (All). which is cited with approval in **Suresh Desai and Associates Vs. Commissioner of Income Tax**, 71 (1998) DLT 772 (DB). In any case the decision of Hon'ble Delhi High Court is on specific issue regarding date of taking treatment and date of becoming member of CGHS/ relevant scheme. In this case the applicants / deceased were residing in an area not covered by CGHS Scheme and as such that decision would not be even otherwise applicable to the facts of these cases.

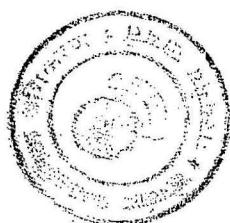
31. Recently the Hon'ble High Court of Himachal Pradesh has also once again decided the issue exhaustively in CWP No. 4621 of

2011 - Union of India & Another Vs. Shankar Lal Sharma

decided on 28.12.2015, while carrying out a judicial review of an order passed by a co-ordinate Bench of this Tribunal, holding that the retired employees cannot be discriminated in the matter of medical treatment viz-a-viz serving employees. The relevant observations made by the Hon'ble Court are reproduced below in extenso for ready reference:

"51. The legal maxim "salus populi suprema lex esto" can usefully be called in aid in the present case also. It means "Let the good (or safety) of the people be the Supreme (or highest) law". Salus is a latin word, which means health / prosperity, safety as per Black's Law Dictionary. Thus, health of the people should be the supreme law.

52. It is the prime responsibility of the State Government to protect health and vigour of retired Government officials, this being their fundamental right under Article 21, read with Articles 39 (3), 41, 43, 48-A of the Constitution of India. The steps should be taken by the State to protect health, strength and vigour of the workmen. Non-providing of post-retirement medical care to retired Government official in a city not covered by CGHS at par with in service employee would result in violation of Article 21 of the Constitution of India. Moreover, employees need medical care most after their retirement. The State cannot call its own actions as wrong. We have clarified and explained O.M. dated 20.08.2004 and it is made clear that all the Central Government pensioners residing in non-CGHS areas would be covered either under the CS (MS) Rules, 1944 or CGHS as per their option to be sought for by the Central Government. In order to avoid litigation, this judgment shall apply to all the retired Government officials residing in non-CGHS areas. There should be equality of health benefits to retirees as well in their evenings of life. There cannot be any discrimination while extending the social benefits to in service and retirees. It is the prime responsibility of the State to protect the health of its workers. In view of the phraseology employed in O.M. dated 05.06.1998, Note 2 appended to Rule 1 is read down to extend the benefit of CS (MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and to make it workable. The higher Courts have to evolve new interpretive tools in changing times. The neo capitalism may concentrate wealth in the hands of few



persons which would be contrary to the philosophy of the Constitution of India. Right to health is a human right. The action of the petitioner-Union of India not to reimburse the medical bills to the respondent and also not giving option to him and similarly situate persons residing in a city not covered under CGHS as per O.M. dated 5.6.1998 to either opt for CGHS Scheme or CS (MA) Rules, 1944, is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 15 and 21 of the Constitution of India. The decision in matters pertaining to the health of the employee should be taken with utmost humane approach.

53. Ordinarily we would have ordered the retired Government officials to refund the amount already received by them, but taking into consideration that this would be oppressive and cause undue hardship to them, we order the Union of India not to make recoveries from the respondent and similarly situated persons residing in non-CGHS areas in the event of their opting for CS (MA) Rules or CGHS.

54. Accordingly, the writ petition is dismissed. However, the Union of India is directed to seek the option from the respondent and similarly situated retired employees residing in non-CGHS areas for medical coverage either under CGHS Scheme or under CS (MA) Rules, 1944 as per Office Memorandum, dated 05.06.1998 within a period of six months. Henceforth, the pensioners should be given one time option at the time of their retirement for medical coverage under the CGHS Scheme or CS (MA) Rules, 1944. The Union of India is also directed to release a sum of Rs.1,79,559/- incurred by the respondent on his treatment and a sum of Rs.20,000/- incurred by the respondent towards post operation follow up, medicines and transportation charges within a period of three months from today, failing which, the respondent shall be entitled to interest @12% per annum. The miscellaneous application (s), if any, also stand (s) disposed of. No costs.

"Salus populi suprema lex esto – The health of the people should be supreme law".

32. The aforesaid latest decision of Hon'ble High Court of H.P. also takes care of the objections raised by the respondents on the basis of clarification issued in 2004. The court has exhaustively dealt with the issue. This Court is duty bound to follow this decision of Hon'ble jurisdictional High Court, as compared to view

taken by the Delhi High Court, which even otherwise is in a different context as explained above. Even the Division Bench decision of a co-ordinate Bench of this Tribunal taking a contrary view in the case of Harpreet Kaur (supra) is per incuriam as it does not take into consideration the rules and the law discussed above including the decisions of Hon'ble Punjab and Haryana High Court and Himachal High Court and as such the respondents cannot take any benefit of the same.

33. In the backdrop of aforesaid discussion, we have no hesitation in our mind in holding that right to health is integral to the right to life and the Government cannot escape from its responsibility to provide health facilities to retired employees as well as held by our jurisdictional high courts. Even if one has not become member of the CGHS due to his/her residing in a non-CGHS area, he/she would be entitled to reimbursement of the medical expenses. As has rightly been held by the co-ordinate Bench of this Tribunal at Delhi in the case of Partap Singh (supra) and other cases that the instructions dated 20.8.2004 do not take away the effect of instructions/policy decision dated 5.6.1998. The retirees had to per force opt for fixed medical allowance as the area where they are residing is admittedly not covered by the CGHS facilities. The fixed medical allowance opted for by the retired employees and given to them is for outdoor facilities only and cannot take care of hospitalization. In view of these facts, these nine Original Applications are allowed. The orders rejecting the medical reimbursement claim of the applicants are quashed and set aside. The respondents are directed to consider and reimburse the medical reimbursement claim of the applicants at

the rates fixed by AIIMS/PGIMER, within a period of two months from the date of receipt of a certified copy of this order.

34. The claim of the applicants for grant of interest is, however, declined in view of law laid down in the case of Om Parkash Gargi Vs. State of Punjab, 1996 (11) 399 and State of Haryana Vs. Anita Chaudhary, (2004) 136 PLR 209.

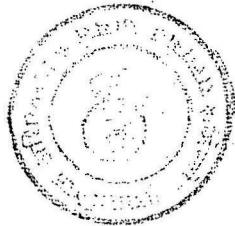
35. The parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 25.2.2016

HC*



प्रमाणित सत्य प्रतिक्रिया/Certified True Copy
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25/2/16
अनुभाग अधिकारी (प्रतिक्रिया अधिकारी) / Officer (Jud.)
जनरल अधिकारी अधिकारी अधिकारी
Central Administrative Justice Tribunal
चंडीगढ़ बैच, Chandigarh Bench
चंडीगढ़/Chandigarh

(O.A.No. 060/00884/2014-
Baldev Singh Vs. VOI etc.)

True copy
Signature
Adv.